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ABSTRACT

The report provides an update on the status of Massachusetts' equal educational services for minority students in special education. Among progress cited is increased awareness of the problem of disproportionate placement of racial and linguistic minorities in special education. A chronological record of events occurring after the initial report on the situation in 1978 is presented. Parents and citizens are urged to take such actions as requesting copies of the school district's plans and policies. The ways in which racial and cultural bias influence decisions in special education placement are reviewed on referral, assessment, and placement phases, and eight recommendations are made. Critiques of the remedial plans developed by nine districts are offered in terms of case reviews, inservice training, programmatic alternatives, staffing, and community participation. Procedures for monitoring district compliance are discussed. (CL)

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STATUS REPORT

DOUBLE JEOPARDY

The Plight of Minority Students in Special Education

"Traditionally, handicapped children and non-white children have been the most vulnerable to discrimination in education, the most likely to be excluded or unserved by the public schools. Obviously, when a child is both handicapped and a minority (s)he is in danger on two counts; in double *jeopardy."*

I. Introduction

In June of 1978 the Massachusetts Advocacy Center released *Double Jeopardy: The Plight of Minority Students in Special Education.* This report found that despite state law Chapter 766 and federal law 94-142 which guarantee equal opportunity in special education, Black and Hispanic students in public schools in Massachusetts continued to be subject to discrimination based on race and language. The major findings of that report were:

1. Minority students are enrolled in special education in certain school districts at rates significantly different from the corresponding enrollment rates of non-minority students.
2. Minority students are disproportionately placed in the most restrictive in-school prototypes (502.3 and 502.4) compared to non-minority students.
3. Students classified Hispanic (non-White) are disproportionately placed in special education overall and in restrictive in-school prototypes compared to students classified Hispanic (White).
4. Minority students are under-represented in special day (502.5) and residential (502.6) prototypes.

This Status Report provides an update to *Double Jeopardy.* It is an analysis of the progress made to date and an agenda of issues and problems which continue to stand in the way of equal educational opportunity. Today, almost three years after *Double Jeopardy* first brought these issues to the public, we can see some progress towards curbing the practices which result in unequal educational opportunity for minority students in special education. We do not expect that the battle is won. Institutional racism, cultural bias built into tests and testers, and a host of other discriminatory practices are not easily eliminated; nor are their effects easily undone.

Discrimination in special education referral and placement is not new, nor is it unique to Massachusetts. Massachusetts *is* unique, however, in being one of the first states to attempt to meet this difficult problem head on. In many respects the progress that Massachusetts has made in this area is ground-breaking. The state Department of Education and the local school districts involved have had to proceed without the benefit of model solutions tested in other states, and largely in the absence of any practical guidance from education experts at the federal level.

II. Assessment of Progress

Progress at the state and local level has not come easily or smoothly, but progress has been made. The Department of Education has developed the data analysis capability and statistical standards necessary to annually review local school systems for *prima facie* denials of equal educational opportunity. It has put in place standards and procedures for review, approval and monitoring of local school system Remedial Plans for *prima facie* denial. Moreover, it has attempted to address the issue not as a "special education" problem but as an education problem, the solution to which depends as much on the regular curriculum as on the bilingual or the special education programs in a school system.

Over the past two years school administrators and teachers in the districts cited for *prima facie* denial have demonstrated an increased awareness of the problem of disproportionate placement of racial and linguistic minorities in special education. Of the nine districts originally cited in 1979, statistics now show that four no longer have disproportionate placements. In addition, despite serious planning flaws which will make evaluation of the effectiveness of specific remedies difficult, several innovative and promising remedial strategies have been attempted. For example, Boston and to a lesser degree,

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Holyoke have begun to develop criteria for entrance into and exit from the more restrictive 766 prototypes. Hopefully, this will eliminate the problem of different standards being applied to minority students, as well as the problem of differing standards used by different decision-makers.

Remaining obstacles to the protection of equal educational opportunity include inadequate data systems and administrative mechanisms for documenting the special education process in most school districts. Schools systems have generally been unable to "sell" *prima facie* denial as a multifaceted "education" issue rather than a limited special education problem. They have also been generally unsuccessful in effectively informing and involving minority parents and community groups.

What follows is a brief chronology of the major events of the last two and a half years in response to the report, *Double Jeopardy:*

June 20, 1978 — Education Commissioner Gregory Anrig responds to MAC report in a press release stating: "To the extent that the data contained in *Double Jeopardy* leads to findings of the existence of any denial of equal educational opportunity, full enforcement actions will be taken to correct such practices."

January 28, 1979 — The Department of Education officially cites nine school districts for *prima facie* denial of equal educational opportunity and warns 17 other districts. Cited districts (Boston, Brockton, Chelsea, Holyoke, Lowell, Lynn, Springfield, Woburn, and Worcester) are required to develop and implement Remedial Plans. Seventeen additional districts (Ayer, Barnstable, Cambridge, Falmouth, Harwich, Haverhill, Lawrence, Leominster, New Bedford, Pittsfield, Plymouth, Randolph, Salem, Somerville, Southbridge, Waltham, and Wareham) received letters warning them of the possibility of future *prima facie* citations.

March 21, 1979 — Holyoke contests the Department's finding of *prima facie* denial and proceeds to public hearing.

April 18, 1979 — Two social workers in Holyoke are permitted to intervene on behalf of minority students and their parents, as a third "interested party" to the official proceedings. They are represented by attorneys from the Massachusetts Advocacy Center and the Lawyers' Committee for Civil Rights Under Law.

April 18, 19, and May 1, 1979 — Three days of Public Hearings are held in Holyoke by the Department of Education Hearing Officer.

June 22, 1979 — The Hearing Officer in the Holyoke case issues a decision upholding the allegations that Black and Hispanic students are denied equal educational opportunities in the Holyoke Public Schools and orders Holyoke to develop and implement a Remedial Plan.

September 1979 — All parties to the Public Hearings; Holyoke, the Department of Education and the Interveners agree on an acceptable Remedial Plan which is approved by the Hearing Officer in the form of a Consent Decree agreement between the parties. However, official signing of the document is delayed until January 1980 because of Holyoke's desire to combine this plan with a bilingual education compliance plan ordered by the Federal Office of Civil Rights.

September 1979 — Eight of the nine required Remedial Plans are approved by the Department (See Appendix for summaries of Remedial Plans.)

October 31, 1979 — The Department announces its plan for monitoring district Remedial Plans through its Regional Education Centers. (See section "Monitoring the 1979 plans.")

November 16, 1979 — Associate Commissioner for Special Education, Roger Brown reports to the State Board of Education on "Activities in Regard to Disproportionate Placement of Minority Students in Special Education," saying, "While we have spent considerable time and effort on this issue, we recognize that we cannot lessen our efforts. We have made a beginning and we are committed to follow up on our work of the past year."

December 31, 1979 — First Monitoring Reports are due to be submitted. Regional offices of the Department of Education file written reports of their first on-site monitoring visits for all cited school districts except Boston.

February 8, 1980 — A partial evaluation of Boston's Remedial Plan is filed. The on-site visit, however, is postponed until some time in April.

February 19, 1980 — The Department of Education releases a press statement in which it announces that, based on its analysis of October, 1979 school data, it had cited nine school districts for *prima facie* denial of equal educational opportunity. These nine districts include five of those cited in 1979 (Boston, Holyoke, Lowell, Springfield, and Worcester), and four districts which had received warning letters in 1979 (Pittsfield, Lawrence, New Bedford, and Falmouth). The four newly cited districts are required to submit Remedial Plans by March 28, 1980.

March 30, 1980 — Second Monitoring Reports are due. Reports on Springfield and Holyoke are filed in March.

April 1980 — Reports on Worcester and Chelsea are completed.

May 1980 — In May a report of the first four of Boston's eight Remedial Plan components is completed. Reports on Woburn, Lynn, and Lowell and Chelsea are also completed in May 1980.

June 30, 1980 — The third and final reports on Remedial Plan implementation are due. Reports on Worcester and Holyoke are completed in June.

July 1980 Final report on Springfield is completed.
August 6, 1980 The final report on Boston (the remaining eight components) is completed.

The following charts indicate school districts cited for *prima facie* denial of equal educational opportunity, and districts "warned" of potential denial in school years 1978–1979 and 1979–1980.

TABLE A

"Bad in '78–'79" Cited '78–79	"Got Better" Cited '78–'79 Not Cited '79–'80	"Same or Worse" Cited '78–'79 Cited Again '79–'80	"Got Worse" Newly Cited 1979–'80	Summary All '79–'80 Cited LEA's	
Boston		Boston	Falmouth	Boston	2
Brockton	Brockton		Lawrence	Falmouth	1
Chelsea	Chelsea		New Bedford	Holyoke	2
Holyoke		Holyoke	Pittsfield	Lawrence	1
Lowell		Lowell		Lowell	2
Lynn	Lynn			New Bedford	1
Springfield		Springfield		Pittsfield	1
Woburn	Woburn			Springfield	2
Worcester		Worcester		Worcester	2

The total number of school districts cited for *prima facie* denial since the publication of the *Double Jeopardy* report is 13 districts. The total number of school districts which have been officially warned of potential violations is 24 districts (4 of which were later cited), as is shown in the following chart:

TABLE B

Warned '78–'79	Warned '78–'79 Not Warned '79–'80	Warned '78–'79 Warned Again '79–'80	Newly Warned 1979–80		All '79–'80 Warned LEA:	
Ayer	Ayer		Framingham		Barnstable	2
Barnstable		Barnstable	Taunton		Cambridge	2
Cambridge		Cambridge	Weymouth		Framingham	1
Falmouth	*				Haverhill	2
Harwich	Harwich				Leominster	2
Haverhill		Haverhill	Lincoln	m	Lincoln	1m
Lawrence	*		Wayland	m	Taunton	1
Leominster		Leominster	Wellesley	m	Wayland	1m
New Bedford	*		Weston	m	Waltham	2
Pittsfield	*				Wellesley	1m
Weymouth	Plymouth				Weston	1m
Randolph	Randolph				Weymouth	1
Salem	Salem					
Somerville	Somerville					
Southbridge	Southbridge					
Waltham		Waltham				
Wareham	Wareham					

* = in "Newly Cited, Got Worse" Category, Table A

1 = first year
2 = second year
m = Metco community

III. What Parents and Citizens Can Do

The problem of unequal educational opportunity for minority students in the public schools is, of course, not limited to special education. The continuing tendency of school systems to misuse special education placement to the detriment of minority students is only one reflection of pervasive bias within the public schools. Minority group parents, minority community organizations and the minority community at large clearly have a stake in seeing that the public schools provide an appropriate education for all of their children. However, we believe that making sure the schools serve the students they traditionally have failed to serve is an effective strategy for guaranteeing wider educational opportunities for all children. From this perspective, it is clear that all parents and anyone concerned with improving the schools has a stake in this issue.

Community involvement in reviewing and monitoring the Remedial Plans developed by the cited school districts is crucial. Members of the minority community and parents of affected students have a unique vantage point from which to assess the actual effects of the Plan and to suggest ways to improve it. The first phase of monitoring is to become well-informed about the school district's activities. Fortunately, all of the essential information is available in public documents which are covered by the Freedom of Information Act. In school districts which have been cited for *prima facie* denial of equal educational opportunity interested parents and citizens should:

1. Write to the Regional Education Center serving the school district and request a copy of the Remedial Plan and the Monitoring Reports on its implementation.

2. Write to the Administrator of Special Education for the school district and ask what mechanisms have been developed to inform and involve parents in the implementation of the Remedial Plan. If there is a "Parents' Advisory Group" for the Plan, ask to be informed of its meeting dates.

3. Study the Remedial Plan and the Monitoring Reports carefully and write down reactions, questions, ideas or suggestions. Make note of any problems minority students are having with the special education process or services.

4. If possible, share the documents with other parents, community members, and/or community service workers involved with the minority community and get their reactions to the Plan. These people can become the core of a citizen coalition which can be much more effective than a single individual.

5. Write (individually or as a group) to the Special Education Administrator. Detail any community/parent concerns regarding the Plan and its implementation. Arrange to meet with the school officials about the progress of implementation. (Send a copy of the letter to the Regional Education Center.)

Monitoring must be ongoing if it is to be effective. School officials must know that their actions are being watched and evaluated, and that citizens are well-informed and specific in their criticisms. Citizen monitors must be committed to keeping themselves informed over time and to maintaining constant pressure on school officials to get the job done.

Parents and other lay persons who are concerned with issues of racial and linguistic discrimination in special education will need to learn as much as possible about how the special education selection process is supposed to work and how it actually works in their own school district.

The following are some useful sources of basic information on Chapter 766:

1. *The Chapter 766 Regulations* are available from the Regional Education Centers, from the local school district or from the State House Bookstore in Boston. The Regulations detail parent and student rights and the responsibilities of the school district. They are the basic rules every school system must follow in running its 766 program.

2. *The 766 PRIMER*, a handbook for parents and advocates which describes clearly the 766 process and parent/student rights, is available from the Massachusetts Advocacy Center.

3. The school district's *766 Implementation Plan* and *Special Education Budget* are public documents available to anyone on request from the school district. Each school district is required by the state to file a plan describing how it will run its special education program. The plan usually includes budget and personnel information, as well as specific requests for federal special education grants.

4. School districts with large non-English speaking populations may be required by state or federal education agencies to file plans for Bilingual Education Programs. These plans will either be called *Title 21A Plans or Lau Plans*. Among other things, they should contain information relevant to special education services for bilingual students. These plans are also public documents and are available from the local school district and the state or federal education agencies.

5. The Bureau of Program Audit and Assistance in the state Department of Education is responsible for conducting *Program Audits* and *Compliance Reviews* of local school district's special education programs. The written reports of these Reviews and Audits are public documents available from the school district or the Regional Education Center. Information in these Reports can be vitally important and helpful to citizens involved in monitoring for discriminatory practices in local special education programs.

6. In response to the *Double Jeopardy* issues, the Bureau of Program Audit and Assistance has developed an *addendum to its Program Audit and Compliance Review instruments* called "Requirements Regarding Cultural and Linguistic Minorities." This addendum is a checklist of all the special language and culture-related safeguards, procedures and services which local school districts must provide, as specifically mandated in 766 Law and Regulation, for the protection of the rights of cultural and linguistic minority children. This piece of the Program

Audit/Compliance Review instrument can be obtained from the Bureau of Program Audit and Assistance and used by local citizen monitors in formulating and implementing advocacy strategies.

7. Concerned parents and citizens can also become more informed about the special education process through *parents' rights workshops and advocacy training programs.* The Massachusetts Advocacy Center provides a Basic Parents' Rights course as well as a Comprehensive Advocacy Training course. Arrangements for these courses can be made by contacting the Center. In addition, the State Department of Education's Bilingual Special Education Project provides 766 Parent Information Workshops in Spanish and Portuguese and the Federation for Children with Special Needs also runs a 766 Advocacy Training Program.

In seeking to ensure equal educational opportunity, parents should be aware that their basic protection against discrimination in special education is a school system that is in full compliance with the 766 Regulations in both letter and spirit. Unfortunately, these basic protections alone are often not enough to counter the historic tendency of schools to discriminate. Staff that is well qualified, representative of the racial/lingustic population in the school district and committed to the idea of parental participation is critically important. Parents, on their part, must be knowledgeable, vocal and willing to work together in a long-term effort to ensure the educational rights of their children.

IV. The Double Jeopardy Analysis Reviewed

Based upon 1975, '76 and '77 school enrollment statistics, *Double Jeopardy* identified patterns of discriminatory special education placement in numerous Massachusetts school systems. In some cases, minority students were over-represented in the special education enrollment, suggesting that those schools inappropriately placed minority students in special education programs for problems which, if exhibited by White students, would have been handled within the context of the regular education mainstream. In other cases, minority students were underrepresented in the total special education enrollment. This pattern suggests that, because of the schools' failure to understand or provide for cultural and linguistic differences, significant numbers of minority students who may have had special needs simply were not identified and served.

Discrimination also showed up in the types of special education programs in which minority students were placed once they were identified as special needs students. The statistics showed that minority students more often ended up in the most restrictive in-school special education prototypes, largely segregated from the mainstream of school life. At the same time, minority students often had less of a chance than their White peers to be placed in costly private special day or residential schools for severe special needs.

Since the publication of *Double Jeopardy* and the Department of Education's original nine citations, there has been much misunderstanding and misinterpretation of the terms, "*prima facie* denial" and "actual denial" of equal educational opportunity, by parents, school officials and the press. Literally, *prima facie* means "on the face of it." As *Double Jeopardy* points out, *prima facie* denial does not necessarily mean that discrimination exists. It does mean that at first appearance, before investigation, evidence strongly suggests that there is discrimination.

The law (M.G.L. Ch. 71B) does not require that overt, intentional discrimination be proven before departmental action is required. The Department of Education is mandated to review the special education enrollment statistics collected annually from each school district. If the data show a substantial disproportion of minority students in special education programs, that, in and of itself, constitutes *prima facie* denial. The Department is then required to officially notify (or cite) the school district for the existence of *prima facie* denial and require the school district to respond in one of two ways. The school district must prove in a public hearing that the disproportionate placement of minority students in special education programs is necessary "to promote a compelling educational interest of the children affected and the Commonwealth" or they must develop and implement a written plan to eliminate the disproportions. As the law is written, if a school district fails to prove at public hearing that the disproportions were necessary, a finding of *actual* denial of equal educational opportunity is declared.

In 1979 the Commissioner of Education cited nine school districts for *prima facie* denial and encouraged them to submit Remedial Plans based on the *prima facie* evidence, rather than going to public hearings to prove or disprove actual denial. Thus the issue of whether or not the school districts were, in fact, guilty of racial and linguistic discrimination was effectively sidestepped.

V. Racial/Linguistic Discrimination: The Cause

Leaving aside the question of intent to discriminate, the history of the discriminatory *effect* of special education on minority populations is so pervasive and well-documented as to be predictable. Traditionally, handicapped children and non-White children have been the most vulnerable to discrimination in education, the most likely to be excluded or unserved by the public schools. Obviously, when a child is both handicapped and a minority (s)he is in danger on two counts: in *double* jeopardy. Federal, state and local authorities have hesitated to tackle this problem, not so much because of any difficulty in determining what constitutes discrimination, or even if discrimination exists in any particular case, but because of the complexities involved in determining *how* the discrimination occurs and *how* to prevent it. At the local school level this translates into the even more sensitive questions of exactly *where* (in which schools and in which parts of the special education placement process) discrimination enters the process, and *who* (which teachers, administrators, evaluators) is responsible.

Based on our experience with *Double Jeopardy* in Massachusetts, the academic literature and the growing body of legal decisions and governmental policy papers, we can now begin to describe the ways in which racial and cultural bias influence the decision-making process in special education placement. Three critical decision-making phases exist in the special education process: referral, evaluation, and placement. Each phase is uniquely subject

to discrimination based on race, culture and language.

Phase One: Referral

At the referral phase, someone, usually the classroom teacher, must decide that the child has a learning problem. The teacher uses a combination of subjective judgments and purportedly objective instruments to decide whether to refer a particular child for a special education evaluation. Many factors feed into this decision. All are subject to racial, cultural and/or linguistic bias. This bias may be part of the teacher's world view, or it may be built into the structure and history of the school system itself.

It is almost inevitable that wherever the norms of the teacher's culture contradict the norms of the child's culture, the child will bear the burden of adjustment rather than the teacher or the school. Different racial or linguistic groups often have vastly different cultures and these differences are likely to outweigh class, economic or geographic similarities. When a teacher and a student do not share a common culture, the teacher may not fully understand the nature and extent of the problems which the conflict of the two cultures may cause for the student.

There are innumerable subtle ways in which cultural differences can affect a teacher's interpretation of a child's performance and behavior. Cultural differences can manifest themselves in different uses of the language, in shades of meaning, in choice of words, phrasing and tone, different interpretations on non-verbal cues, different expectations with respect to age, sex, and authority roles, different modes of humor, "style" and "good taste." Differences in backgrounds can cause enormous differences in what student and teacher treat as "common knowledge," "everyday situations" and the shape of reality in general, not to mention different social and political assumptions (e.g. America is a land of freedom and opportunity. True or False?) This "world view" particularly influences what people consider to be probable, likely, impossible, possible or desirable. These kinds of projections influence to a large degree people's views of other people's general intelligence and even sanity.

Phase Two: Assessment

Many of these same differences are equally critical in the next phase of special education decision-making. When evaluators (the professionals called upon to conduct assessments of a child referred for special education) have different racial, cultural, and/or linguistic backgrounds than the child being evaluated, these differences tend to influence the subjective aspects of the administration and interpretation of the assessments. Yet even more insidious than the bias of the testers at this phase, is the bias built into the tests and testing procedures themselves.

Most tests have been designed by members of the dominant majority culture (i.e. White, middle-class, English-speaking) and assume that culture as the diagnostic norm. Standardized IQ tests have been the subject of litigation because of their inherent bias toward minority children. *Larry P. v. Riles* (N.D. Cal. Oct. 16, 1979) for example, has placed a ban on the use of IQ tests in assessing minority students for special education placement. Even seemingly objective physical testing such as hearing, speech or vision tests can be discriminatory in content and effect when questions assumed to be related to "common everyday experiences" may not, in fact, be familiar to the minority child. Directions given during testing may be subject to varied interpretation depending on cultural differences in word usage. Moreover, the test setting, the physical and social situation itself, may be so strange to the minority child that it affects the outcome.

Phase Three: Placement

In Massachusetts, after the evaluation phase, a TEAM, composed of the referring teacher, the evaluators, the parents and other school personnel, recommends a service plan. (Individual Education Plan or IEP.) Based on the needs and services indicated by the TEAM, the Special Education Administrator or his/her designee makes a placement decision. Here again, the potential for discrimination and bias is great.

One possible interpretation of the statistics upon which *prima facie* findings were made is that minority children with referral and evaluation data *essentially similar* to that of their White peers are nonetheless placed in programs which are more restrictive of their freedom and more segregated from normal school life. Another possibility is that minority students are more frequently perceived by non-minority referring teachers and evaluators as having severe problems. Because they are different from their classmates both with respect to their handicaps and their cultures, minority special needs students will *appear* to have more severe needs. This will accordingly be reflected in the referral and evaluation data and subsequently in a disproportionately high placement rate in the more restrictive placements.

Any effective solution to this problem must be comprehensive and address both inadvertent, unconscious bias and overt individual and institutional bias in all three phases of the special education process. The role of historic biases now institutionalized in the structure of schools and school systems cannot be overlooked or underestimated in devising solutions. Lack of understanding and respect for minority cultures is reflected in the lack of adequate and appropriate alternatives to special education referrals. The continuing failure of schools to develop effective alternative discipline programs, effective means of communication with minority group and non-English speaking parents, the lack of guidance and academic support geared to minority and bilingual student needs and regular and vocational education curricula which acknowledge and draw upon the cultures of minority students are expressions of this historic institutional bias.

VI. The Remedies

Remediation of systemic denial of equal education opportunity clearly requires, first, that the effects of the past discrimination be corrected and then, that appropriate mechanisms and safeguards be established to prevent discrimination in the future. It is clearly unacceptable to sacrifice the educational lives of children who are currently in restrictive programs in order to study methods of preventing future discrimination. Therefore, the Center recommended to the Department of Education that the following minimum standards be required for all Remedial Plans:

1. The immediate review and/or re-evaluation of all minority students in affected programs.
2. Notification of all parents of minority children in affected programs of their right to an immediate re-evaluation.
3. Mandatory in-service training of all regular and special education staff regarding the implications of the *prima facie* denial issue and the educational significance of cultural and linguistic differences in the special education referral, evaluation and placement process.
4. Review of all tests and testing procedures for cultural/linguistic bias.
5. Review of personnel needs, including plans for recruitment and hiring of additional Black and bilingual Hispanic special education personnel.
6. Concerted efforts to obtain parent and community involvement in the development and implementation of the Remedial Plan, including translation and dissemination of 766 materials.
7. Development and utilization of non-special education and less restrictive special education program alternatives to 766 referral and restrictive placement.
8. Development of an internal data-based feedback system to monitor minority special education placement trends.

The Department of Education, however, did not set minimum standards for Remedial Plans until the second group of school districts were cited in 1980.

As a result, the Remedial Plans developed by the nine school systems cited in 1979 are all predictably deficient in remedies which go to the heart of the problem. Essentially, the problem of disproportionate representation of minority students in special education derives from three general causes:

1. Discrimination based on race, culture and language group in the referral, evaluation and placement processes.
2) Lack of an adequate bilingual 766 service capacity, or in some cases, lack of any bilingual education.
3) Poor implementation of, or non-compliance with 766 in general, which affects minority students more because of the first two factors.

In addition, all of these factors are exacerbated because minority parents are relatively less well-equipped than White, English-speaking parents to take advantage of the formal safeguards and due-process rights built into the special education law. Ironically, minority parents fail to make better use of these formal protections largely because many of them were themselves victims of the discrimination which existed in schools when they were students. Generations of unequal education has created a cycle in which minority parents are more likely to be semi-literate and therefore less familiar with written regulations, less confident of their rights and less likely to pursue formal due-process channels to ensure equal education for their children.

Most Remedial Plans developed by the cited school districts concentrated on remedies which relate to the third category of causes. While poor overall compliance with, and implementation of, the special education law unquestionably contributes to inappropriate placements of special needs students of all racial, cultural and linguistic groups, it cannot alone explain the disproportionate misplacement of minority students. The Plans say somewhat less about problems related to the second category, bilingualism, except in school districts where there had been a previous citation by the U.S. Office of Civil Rights of violations of Bilingual Education entitlements. Moreover, they largely ignore remedies specifically related to the first catagory of possible causes of the disproportions; i.e., discrimination. The Remedial Plans, on the whole, fail to relate proposed "remedies" to identified probable causes. Several of the cited school districts professed total ignorance and bewilderment as to the causes of the statistical disproportions and doubted both their accuracy and significance. Accordingly, their proposed remedies were aimed at a general improvement of their 766 program, rather than at correcting the denial of equal educational opportunities.

Ultimately, the failure of the cited school districts to develop remedies appropriate to the specific causes of the disproportions was a predictable consequence of the Department of Education's process for Remedial Plan development, review and approval. The Department failed to conduct on-site investigations and/or public hearings (except in the case of Holyoke, which refused to file a voluntary Remedial Plan) which would have provided concrete evidence showing the causes of the disproportions, and thus guidance for appropriate remediation. The Department relied instead on the school districts' response to a lengthy Interrogatory (formal request for information) through which the Department hoped to learn more about the specific causes of the disproportionate placements in each district. As it turned out, the Interrogatory was not productive in that respect; accordingly, it was discontinued in the 1980 plan development process.

Not only did the Department fail to fully investigate causes and to set minimum standards for Remedial Plans, it also failed to establish and publicize any procedures for meaningful public review and comment on the Remedial Plans. With the exception of a few well-established consumer/advocacy agencies with the staff capacity to monitor the approval process, the general public remained unaware even that Remedial Plans were being developed. In a memorandum to the Department dated July 10, 1979 the Center protested:

> "It seems illogical, at best, for the Department to proport to welcome community comment on these plans while making no effort to either notify the community or make sure the LEA (school district) notifies the community of the time-table for Department review and approval. The Department or the LEA could notify the community through the media, the RAC (Regional Education Council), local 766 parent advisory councils, or at minimum, the parents of minority students in the programs in question."

With the possible exceptions of Holyoke, by virtue of

the public hearing, and Boston, which convened an "external task force" to comment on the developing plan, none of the 1979 Remedial Plans were reviewed by parent and citizen groups from the minority communites affected. The Department of Education has been unable to furnish documentation of any such review, or school district efforts to obtain such review. Although the Commissioner of Education, in his January, 1979 notification letters to the cited school districts, strongly encouraged the school districts to involve local community members in the development of Remedial Plans, neither Department staff nor school districts interpreted community involvement as a condition for approval of the Plans.

Associate Comissioner Roger Brown of the Division of Special Education asserted in his November 16, 1979 report to the State Board of Education that:

> "Although the specific details of each remedial plan may vary because of both the type of disproportion to be remedied and the unique nature of the system in question, there are several points that are included in all of the plans. These are:
>
> 1) Commitment to providing mandatory in-service training to all school personnel in regard to an awareness of linguistic and cultural differences among students and their impact upon the special education process;
>
> 2) Commitment to ensuring that language dominance and proficiency tests are administered to students prior to referral under Chapter 766;
>
> 3) Commitment to ensuring that efforts are made to explore modifications within the regular education program (including the Title I program) prior to Chapter 766 referral; and
>
> 4) Commitment to conducting a review of all minority students in the programs cited as disproportionate, with special emphasis on determining what criteria would enable the student to move to a less restrictive program prototype."

While the Center does not fully agree with this characterization of the content of the Remedial Plans (as will be discussed in the next section), we must agree that the Department of Education has made a substantial attempt to remedy the problem of racial and linguistic discrimination in special education. The nine district Remedial Plans currently in force and four additional Plans to be implemented in school year 1980-1981 represent an accomplishment which places Massachusetts squarely in the vanguard of states implementing progressive educational policy. Brief summaries of the main points of each of the nine approved *prima facie* denial Remedial Plans implemented during school year 1979–1980 may be found in the Appendix to this report.

VII. Critique of the 1979 Remedial Plans

All nine Remedial Plans were to go into effect in September of the 1979–80 school year. However, some aspects of certain plans (Brockton's for one) had already begun to be implemented soon after the school district was notified of the *prima facie* denial finding in January of 1979. In other cases such as Boston, Holyoke and Worcester, the opposite was true. Some aspects of these Remedial Plans were behind their own time-lines even before approval was finalized and implementation begun. For example, Boston's Plan, dated June 6, 1979, envisioned a special review of minority students in certain 502.4 programs. Student folders were to be collected for this review between June 1 and June 15, 1979 and a special Task Force was to be established by June 15, 1979 to review the folders. The State approved this plan on July 9, 1979, at which time the June 15, 1979 deadline had already been exceeded without the completion of either the collection of folders or the formation of the Task Force. Indeed, the Task Force was not established until January 21, 1980.

The situation is further complicated by the fact that some aspects of many of the Remedial Plans were actually not developed in response to the *prima facie* issues, but were planned or initiated prior to the citations for other reasons. The Central Massachusetts Legal Services office notes in its comments (7/24/79) on Worcester's proposed Plan:

> Worcester appears to have used the process to propose improvements and refinements in their special education procedures, with the hope that there will be a kind of trickle-down effect that will solve the problem of disproportionate placement. The bulk of the proposed plan consists of general improvements in the design and delivery of special education services—improvements which should have similar effects on the placement of minority and non-minority students. Virtually all of the component parts were in place or scheduled for implementation prior to the design of the "remedial plan." Instead of developing an effective remedy for the double jeopardy problems, the Worcester Public Schools have simply collected existing and projected programs, many of which were designed for other purposes, and placed them under the new heading of a "remedial plan."

Whatever their legitimacy, features which were in place at the time the disproportions were noted obviously had not proven successful preventive measures and cannot reasonably be put forth later as potential remedies. In addition, a review of the remedies proposed by the nine school districts calls into serious question the accuracy of the Department's claims that the in-service training relevant to the *prima facie* denial issues is indeed "mandatory" and that "*all* minority students in programs cited as disproportionate" will be reviewed.

Case Reviews

The Remedial Plans in general failed to articulate and analyze the specific causes of the disproportionate placements. This especially limited the level of sophistication of their retroactive remedies and their ability to undo the damage done to an individual child. As mentioned above, some Plans did not provide an individual review of each minority child in a program cited as over- or under-represented with minority students. For example, none of the Plans proposed to review minority students in 502.4 or 502.4(i) programs specifically in relation to the issue of

under-representation of minorities in 502.5 or .6 programs. No Plan suggested that minority students in Transitional Bilingual Education (TBE) or Title I programs be reviewed in relation to their under-enrollment in 502.1 or .2 programs. Moreover, in some Plans the "review" described is really a study of the programs and their enrollments, rather than a review of each child.

The Plans often fail to make clear how the "reviews" proposed as remediation would differ from the reviews and evaluations which placed minority children inappropriately in the first place. It is unlikely that the same process, using the same implicit or explicit criteria and the same personnel would result in significantly different placement decisions.

While some of the Plans do specify that minority staff and/or consultants will be involved in the reviews, the majority do not. The majority also do not specify whether the "reviews" will be a simple "records review" to document compliance with 766 procedures, an "annual review" as defined in the 766 regulations with the required parental participation, or "on-site review" designed specifically to address the issues involved in the *prima facie* denial. Lastly, it is clear that the effectiveness of the reviews is closely related to the timing and quality of in-service training, availability of minority assessors, availability of programmatic alternatives and of non-discriminatory placement criteria.

In-service Training

In-service training of regular, bilingual and special education personnel was probably most frequently identified by the school systems themselves as an essential strategy for eliminating the discriminatory effects of the special education process on minority students. The Center concurs with the school districts' perception of the importance of in-service training and commends the Department of Education's support of these efforts both with technical assistance and funding. However, two major failings, which are evident to some degree in all nine Plans, effectively circumvent the potential impact of in-service training remedies. First, most districts have been unable or unwilling to make specifically related in-service workshops mandatory. In fact, only Holyoke and Worcester indicated that their *prima facie* related in-service training would be mandatory. In all the other districts the result was that teachers, administrators and student support personnel who most needed to be reached could simply choose not to participate. Secondly, much of the in-service training proposed by the school districts was not directly related to either the specifics of the *prima facie* denial issues or to the cultural/linguistic backgrounds of minority students. In commenting on Chelsea's Remedial Plan, for example, we noted:

> The content of the staff workshops does not specify such important subjects as: staff attitudes and their effect on perception of minority students' needs and behavior, bi-cultural communication skills, or the effect of Black and Hispanic cultural differences on the child's learning style and behavior. Additionally, no mention is made of input from the Black or Hispanic community as to the content of staff workshops or participation in them as resource persons. The qualifications or training of the workshop leader in Black and Hispanic cultural and linguistic differences is, likewise, not specified.

Programmatic Alternatives

Several of the Remedial Plans identified a lack of programmatic alternatives to special education referral and placement as a cause of over-enrollment of minorities in special education. Minority students were, these schools surmised, being referred into special education because of poor academic achievement, or because teachers found them hard to deal with in the classroom. On examination school administrators felt that other programmatic alternatives such as Title I remedial programs, vocational programs or alternative discipline programs might be more appropriate than a 766 referral for some of these students. The Plans talked about attempting to develop or increase such alternative programs.

Two major concerns raised by the Center and other organizations which reviewed the Remedial Plans, however, remain unanswered. The first is the question of criteria for distinguishing when a child is appropriate for a remedial or compensatory program such as Title I reading or math rather than (or in addition to) a special education program. The schools seemed to suggest that 766 and Title I were interchangeable programs and that if "too many" minority students showed up in 766, one could simply redirect a number of them to Title I. Although there are significant differences in both the kinds of problems addressed and the kinds of services provided by special education and remedial education programs, the Department of Education has not issued any policy guidelines which might dispel this apparent and ongoing confusion.

The second concern related to the programmatic alternatives remedy is the danger of creating separate, racially distinct programs which will in effect become "dumping grounds" for minority students perceived by teachers and school administrators as discipline problems. Central Massachusetts Legal Services, commenting on Worcester's Remedial Plan, expressed strong concern about the possibility of such misuse of alternative program options.

> This is one of the most glaring inadequacies of the proposal for additional alternative programs. Unless there are clearly stated criteria and methods of resolving jurisdictional questions between such a program and special education, the program could easily become a dumping ground for some minority students who are now trapped in the more restrictive prototypes. The 766 statistics might then appear to comply with G.L. c.71B, §6, although the disproportionate placement in effect continues under a new title.
>
> Unless the exact nature of the interface between this program and 766 is defined (particularly for students who are eligible for both programs), there will be no way to monitor whether the placement process is being abused or misused in an effort to deliberately change 766 enrollment statistics.

Statistics demonstrate that in schools undergoing desegregation, Black students are disciplined and suspended at

rates substantially greater than White students. (See, for example *The Student Pushout: Victim of Continued Resistance to Desegregation*, 1973 by the Southern Regional Council and the R.F.K. Memorial.) Alternative programs that involuntarily separate students from the mainstream and do not provide clear and effective due-process and parent involvement procedures pose possibly an even greater threat to the civil rights of minority students than the misuses of the 766 process. For special education at least there is a formal appeal procedure.

Staffing

Many of the cited districts stated that they planned to hire additional minority staff as one remedy to the problem of disproportionate minority special education enrollments. The lack of bilingual special educators and assessors, particularly bilingual psychologists, was recognized as a factor in the misplacement of Hispanic children, but recruitment of bilingual professionals was viewed as a difficult problem. School officials explained that there were few biligual professionals available and that school districts were unable to offer the salaries these professionals could command in the private sector. However accurate this appraisal may be, there is also evident a lack of rigorous and imaginative recruitment efforts on the part of the school districts. Most districts did not have effective liaison with the minority community. Most did not make any serious attempt to recruit personnel from out of their local areas.

Some districts attempted to develop their Transitional Bilingual Education program staff to eventually fill the gaps in the special education program by offering them incentives to become certified as special educators, as well as encouraging special education staff to learn Spanish. In addition, many districts planned to meet their immediate needs by using English-speaking special education teachers with Spanish-speaking classroom aides and allowing monolingual speech therapists and psychologists to evaluate and treat bilingual students with the help of translators. Such strategies are at best stop-gap measures which introduce a substantial danger of inadequate or inappropriate treatment.

Beyond the difficulties of acquiring bilingual special needs personnel, the Remedial Plans generally had two other deficits with respect to minority staffing provisions. The numbers and types of additional minority staff suggested as necessary appeared to be based on only the most obvious deficiencies, not on any empirical analysis of staff-to-student ratios or standard case load figures for the various professional functions. Especially in systems where the regular education and student support staff (guidance, tutoring etc.) are largely White and English-speaking, the real need for additional minority staff may have been severely underestimated.

An issue generally overlooked in the Remedial Plans was the need for bicultural as well as bilingual staff. The Western Massachusetts Legal Services office made this criticism of the Springfield Remedial Plan:

> The Springfield School System has expressed a commitment to the hiring of bilingual personnel for conducting the tests which play a large part in the determination of a student's 766 placement. There is, however, no commitment to the recruitment and hiring of bicultural personnel for Hispanic or Black students . . . . the difference in cultures must be taken into consideration when assessing a child's special needs. The examiner must understand the child's culture in order to get an accurate reading of the child's potential and to insure that the difference is noted as a difference and not a deficit. This is true for Hispanic children as well as Black children in Springfield.
>
> The experts with whom we have consulted have informed us that language dialects vary in different geographical areas. For example, Black culture and Black language in Charlestown, South Carolina is different from Black culture and Black language in Springfield. Likewise, both the Spanish language in Puerto Rico and in America are different from the Castilian Spanish which is taught in U.S. Colleges. Puerto Rican Spanish is different from American Spanish. In addition, there are cultural differences within Puerto Rico alone which generate different life experiences and different language usages. . . . Springfield fails to recognize that Black students have cultural differences from the anglo culture as do Hispanic children. Their special cultural and linguistic needs must also be addressed in the assessment and placement process. We also have serious concerns about the lack of Black staff in Special Education. Despite Springfield's answer to the February 12 interrogatories, a review of the 1978 EEO forms reveals an all White psychological staff.

School systems have not fully understood or accepted the importance of Black and Hispanic (as distinct from bilingual) professionals in meeting the needs of minority students. The education profession takes for granted that specialized training and experience with a particular type of special needs child may be a legitimate prerequisite for hiring an otherwise qualified educator. Racial/cultural background must be seen as a similar kind of specialized experience and a legitimate prerequisite for working effectively with minority students, and especially minority students with special needs.

Community Participation

A final criticism which applies to all of the Plans is the failure of the cited school districts to solicit and include comments from the affected minority communities in the development of the Remedial Plans. Little if any effort was made by school officials to inform their communities of the *prima facie* denial issues. This was true even in Boston, where an ad hoc Task Force of professionals and parent/advocates outside of the school system was convened to provide feedback on the development of the Plan. Parents of minority students in the special education prototypes cited as disproportionate were not notified of the discovery of possible denial of equal educational opportunity to their children. Nor were they informed of the development or content of the plan to remediate the denial. In Boston, parents of students in selected 502.3 and 502.4 programs were sent a form letter which requested their cooperation in a special effort to review student placements. These letters, however, did not refer to the *prima facie* denial citation, the Remedial Plan or the need

for community participation in developing, implementing or monitoring the Plan.

It should be noted also that the Department of Education failed to require notification of all parents of minority students as the most obvious and necessary first step in soliciting the participation of concerned citizens. In the absence of such notification, the minimal community outreach efforts of school districts failed to stimulate a significant level of community response to the issue. Greater community, and especially parental, participation would very likely have forestalled many of the serious shortcomings of the Remedial Plans and led to the development of more effective remedies.

VIII. Monitoring and the Department

In August of 1979 the Center wrote to the Associate Commissioner for Special Education urging him to develop and disseminate a plan for monitoring the *prima facie* Remedial Plans which would insure a reasonable degree of community participation. Other concerned groups such as Western Massachusetts Legal Services and the Lawyers Committee for Civil Rights Under Law joined us in urging a rigorous and open monitoring process. In the Associate Commissioner's November 16th Report to the State Board of Education, he briefly outlined his plans for monitoring implementation as follows:

> We have developed a fairly extensive monitoring program for all of these plans. Monitoring efforts will be conducted primarily by the staff of the Regional Offices and will continue throughout the school year. Three separate site visits will be made by Department staff members. In addition, the school systems will be filing reports of their progress with their implementation plan. Provision is made for the involvement of community groups that have expressed an interest in this area. The final reports will be issued in July of 1980, at which time we will review the entire year's effort.

The more detailed format given to Regional Education Center Directors in a directive from the Deputy Commissioner for Program Operations dated October 31, 1979 contained the following provisions:

I. A letter to the LEA informing them of the monitoring plan/process.

II. A letter to concerned community groups informing them of the monitoring process, time-table and naming a person in the Regional Office to contact for further information on the *prima facie* issue.

III. An outline of specific monitoring activities and objectives including: review of a sample of minority special needs student folders, observation of students in programs, interviews with staff and parents, collection and review of LEA data, review of specific activities proposed in LEA Remedial Plans.

IV. Site visits to be conducted in November 1979, February 1980 and May 1980.

In addition, the directive stated that:

> Each regional office will report to the Deputy Commissioner for Program Operations on monitoring activities by the following dates: December 31, 1979; March 30, 1980; June 30, 1980. These reports will cover the items listed in III above and will include regional office recommendations for changes in remedial plans and/or further action to be taken by the Department. All reports will be disseminated to concerned community groups.
>
> In order to further assure ongoing public awareness of remedial plan implementation, regional offices will report on a bi-monthly basis to the Regional Education Council.

The Department's plan for monitoring was largely responsive to our concerns and in some respects went beyond what we had proposed. However, the Department delegated primary responsibility for carrying out the monitoring effort to its Regional Offices. The Department maintains six Regional Education Centers, each staffed by representatives of the major divisions and bureaus in the Department. These Regional Education Centers are charged with two major functions: providing technical assistance to school districts and monitoring/enforcing education laws and regulations. With regard to special education this latter function is through the Program Audit System, which monitors a school district's compliance with 766 regulations, and through the Complaint Management System. This system is supposed to respond to individual consumer/parental complaints. In the past, the Regional Offices have often been ineffectual in compliance/enforcement matters. For example, non-compliance issues cited in 766 Program Audits conducted one to three years ago by the Regional Offices still exist, unremediated, in Lowell, Springfield, Holyoke and other districts now cited for *prima facie* denial.

In an effort to make sure that the Regional Offices began properly, we provided the Department with a list of over 125 concerned organizations and/or individuals in the nine affected communities to whom the Regional Offices should send the "concerned community groups" letter. In addition, in January of 1980 we wrote open letters to the editors of the major newspapers in each of the affected communities outlining the *prima facie* issue and urging citizens to write to their Regional Education Center for more information. Since then we have continued to monitor the Department's actions with respect to the *Double Jeopardy* Remedial Plans.

The Monitoring Reports from the Regional Education Centers have varied greatly in both timeliness and quality. The initial Reports from the Northeast Regional Education Center on Lowell, Lynn and Woburn were perfunctory, consisting of one-half page each. However, the problems with the initial Reports appear to have been directly related to the lack of a permanent Regional Center director at the time and the failure to establish a formal "monitoring team." Subsequent reports from the Northeast Center were more satisfactory.

The majority of Regional Centers produced Monitoring Reports which generally followed the format of the Remedial Plan, and indicated whether the planned activities were being implemented on schedule. Most of the Reports indicated that records reviews and/or interviews had been done by the monitoring team. Recommendations included in the Monitoring Reports rarely went beyond the activities of the Remedial Plans themselves or

suggested changes in the Remedial Plans. In fact, some school districts took the position that the monitoring team's authority was expressly limited to reviewing the implementation of those specific activities which had been approved by the Department as constituting an acceptable Remedial Plan. Nonetheless, the monitoring teams did include in their Reports findings of 766 violations whether or not they specifically related to the Remedial Plan implementation.

The major failing of the Monitoring Reports was that they did not evaluate the effectiveness of specific remedies or of the Remedial Plan as a whole in eliminating either the statistical disporportions or the discriminatory effects. Most of the cited school districts did not produce documentation suitable for making such an evaluation. This is in part due to the general lack of sophisticated data systems in the school districts, but is in larger part due to the failure of the Department to determine what data would be necessary, and to require collection and reporting of that data. To date, the Department has failed to develop an evaluation model for the Remedial Plans beyond the initial statistical trigger for *prima facie* determination. Lacking any departmental policy or guidelines for measuring the effectiveness of specific remedies, the Regional Center teams have no authoritative basis for recommending substantive alterations in the Remedial Plans. Further, the school districts themselves lack critical feedback on the effectiveness of their activities as they continue their remedial efforts into a second year.

Based on the experience with the 1978-79 *prima facie* Remedial Plans, the state Department of Education has developed the following *Required Elements of Remedial Plans* which currently apply only to school districts *newly* cited in school year 1979-80:

1. The placement of all minority students in special education prototypes 502.3 through 502.4(i) which were identified for disproportionate enrollment shall be reviewed in accordance with section 333.0 of the Chapter 766 Regulations. As part of this process parents shall be notified of their right to request a re-evaluation or independent evaluation.

2. The identification of the primary home languages of all students, including an assessment of language dominance and proficiency, as well as achievement levels.

3. A statement of the manner in which interested community groups will be involved, both in the development of the remedial plan and on an ongoing basis.

4. A plan for providing in-service training to all staff addressing at least the following areas:

   a. Cultural awareness: the impact of cultural and linguistic diversity on the individual learner and the learning environment.

   b. Non-discriminatory assessment: issues, techniques and procedures to assure non-discriminatory assessment in the evaluation of minority students.

5. A description of the procedures through which bilingual education and special education staff collaborate in the referral, evaluation, and placement of limited English proficiency students.

6. A plan for increased efforts at public outreach to assure that minority parents are aware of their rights under Chapter 766 and understand the procedures for referral, evaluation, placement and appeal.

7. A plan to review the placement patterns of special needs students by school building to determine if the problems are isolated to specific grade levels or individual schools.

8. A statement of procedures currently used, or to be under-taken, to provide appropriate staffing for serving the needs of minority children in special education. (A list of staff providing special education and related services indicating the number of minority staff in each area should accompany the plan.)

9. The identification of an individual to monitor the implementation of the proposed plan. This individual should not have a direct line relationship with those persons responsible for implementation.

These standards, although not intended as evaluative criteria, do provide some guidance in planning remediation strategies. As standards for Remedial Plans, however, they should be applied uniformly to all of the cited districts. School districts which were cited in 1979 and re-cited in 1980 should be required by the Department to develop second year Plans or Plan Addendums for school year 1980-81 which adhere to the standards required of the newly cited districts.

The Department of Education now has within its Bureau of Program Evaluation and Planning the capability to review routinely the annual School Summary Report data for each school district and issue *prima facie* denial citations based on a standard analysis of this data. They have also created a credible process for development and review of Remedial Plans to eliminate such denials and standards for approval and monitoring of the Plans. For these significant achievements the Department deserves credit. However, the Department has not yet fully met its mandated responsibilities under C. 71B in that it has not investigated disproportionate placement of linguistic minorities other than Spanish. Special education statistics on the placement of Portuguese, Cape Verdian, Haitian, Greek and Chinese students, for example, have never been analyzed and to date the Department has announced no plans to do so. A computerized data analysis mechanism which could coordinate and facilitate such a data-based compliance monitoring of special education has not yet been put into operation. The Department must now move to complete its response to *Double Jeopardy* and to consolidate the progress Massachusetts has made in addressing discrimination in special education.

Continued progress in understanding and remediating discrimination in special education will require that the Department of Education move directly to the next critical phase in which it must accomplish the following major tasks:

1. The Department must develop more sophisticated statistical analyses and standards for determining *prima facie* denial capable of defining equitable reso-

lution in technically marginal situations and enabling a more aggressive approach in clearly discriminatory or damaging situations.

2. The Department must refine its monitoring approach to uniformly include evaluation of results against a standard, recommendations of a specific rather than general nature and firm, consistent application of available sanctions.

3. The Department must conduct a close analysis and evaluation of the effects and effectiveness of the specific remedies which have been implemented to date in order to (a) refine its *prima facie* Remedial Plan guidelines and requirements and (b) offer more definitive and useful technical assistance to the local school districts.

APPENDIX

Summaries of 1979 Plans

Boston

According to the October, 1978 School System Summary Reports filed by Boston, 5,486 of its 31,798 Black students, 1,069 of its 8,715 Hispanic students and 3,964 of its 28,716 White students were enrolled in special education programs. According to the Department of Education, these figures represent a substantial over-enrollment of Black students and a slight under-enrollment of Hispanic students in special education. The Department also found substantial disproportions in the rate of placement of Black and Hispanic students in the very restrictive 502.3 prototype programs. Both Blacks and Hispanics were placed in these programs at a disproportionately high rate. In addition, the Boston School Department's own analysis revealed that both Blacks and Hispanics were substantially under-enrolled in the more costly 502.5 and .6 prototypes (private day and residential schools). Boston developed a plan to remedy these apparent denials of equal educational opportunity which consisted of the following eight components:

1. The Development and Implementation of a Criterion Referenced Referral, Assessment, Placement and Review Processes ". . . the set of professionally agreed upon criteria that determines a student's placement in one special education program versus another, or not in a special education program at all (entrance criteria). The measures, tests, and "scores" on such tests, that determine that a student is no longer in need of special education (exit criteria)."

   - hire two psychoeducation experts
   - pilot the process in two districts during 1979-80 with the necessary in-service training
   - complete the implementation of above process for all 502.4 students by 1980-81
   - design and pilot a similar process for 502.1, .2 and .3 students by 1980-81.

2. Local School Responsibilities:

   - September and October 1979 in-service principals and building staff on 766 pre-referral process
   - by June, 1980 capacity for monthly individual school data on minority 766 referrals to all school principals
   - implement a "no carbon required" special education referral form to provide better data collection.

3. Review of minority students in 502.3 programs in certain schools which data indicate have over-representation of Black and Hispanic students in their 502.3 programs by December 15, 1979.

4. Implement a Generic Specialist Model during 1979-80 to provide more 502.1 services and more support services to regular classroom teachers.

5. Translate into Spanish and disseminate to parents relevant sections of Boston's special services directory "Connections" by January 1, 1980.

6. Review staff and curriculum in Special Needs classrooms to insure adequate services for Hispanic students during 1979-80.

7. Develop more Regular Education Alternatives

   - Criteria Referenced Tests as a diagnostic tool, restructure Curriculum Competency Department to provide staff support in how to provide individualized help to students in reading, math, etc.,
   - "Schools Without Failure" alternative program to be evaluated,
   - "in-school suspension" program,
   - new Code of Discipline, etc.

8. Task Force Review of placement of all 502.4 students by September, 1979 which will recommend complete re-evaluations where appropriate to be completed by November, 1979 or January 15, 1980. Task Force will also conduct on-site observation and teacher interviews of selected students, information from which will be presented as part of student's annual review no later than April 15, 1980.

Brockton

In Brockton, according to the October, 1978 statistics reported to the Department, 2,145 children received special education services. Brockton's enrollment consisted of 17,734 White, 620 Hispanic and 1,439 Black students. There were also a significant number of Cape Verdian students, with distinct language and cultural differences who may have been counted as Black or Hispanic in the special needs census. The major problems in Brockton cited by the Department of Education were an under-enrollment of minorities (especially Hispanics) in special education overall, coupled with a substantial over-enrollment of minorities in the more restrictive kinds of special education classrooms (502.3 and 502.4/502.4(i)).

In responding to the Department of Education's citation, Brockton quoted later enrollment figures (17,791 White, 519 Hispanic and 1,350 Black students) which, it claimed, showed the overall minority and White special

education enrollment rates to be about equal, and the only "significant area of concern" to be minority over-enrollment in prototype 502.4 (substantially separate classrooms). Their Remedial Plan contained the following provisions:

Staffing:

1. To hire one full-time Hispanic special needs teacher, primarily for 502.2 and 502.3 prototypes.
2. To hire one half-time Cape Verdian special needs teacher, primarily for 502.1 and 502.2 prototypes.
3. To continue to use a bilingual (Hispanic) psychologist for psychological evaluations of bilingual students on a consultant basis.
4. To consider hiring a bilingual aide for the speech therapist.
5. To continue to contract with Children's Hospital for bilingual speech therapy evaluations, and to continue to seek to hire a bilingual speech therapist.

Referral/Evaluation Process:

1. To continue to attempt to modify the regular education program by making use of Title 6 and bilingual programs when appropriate, but to "more closely scrutinize" minority referrals with respect to possible use of 766 instead.
2. For the remainder of the school year all minorities referred for 502.3, .4 or .4(i) programs will require the signature of the Director of Special Education.
3. TEAM leaders for "speech only" referrals will file a monthly count of new minority referrals and placements. These statistics will be reviewed at monthly special education administrative staff meetings.

In-service Training:

1. Bilingual staff will be "strongly encouraged" to attend the month-long seminars on "mainstreaming the Special Needs Child".
2. Bilingual staff will be "strongly encouraged" to attend the three in-service days scheduled for special education.
3. Special and regular education staff will be informed of statistics on minority referrals and placements at monthly staff meetings.
4. The special education referral process will be discussed at the building level.
5. A bilingual/special education sub-committee will plan future in-service programs on minority special needs during September-December, 1979.
6. The special education parent advisory council will continue to meet and will "encourage minority participation."

Chelsea

Chelsea is a system with 2,755 White, 849 Hispanic and 114 Black students, of whom 579 were placed in special education programs. Chelsea was cited by the Department of Education for both over- and under-enrollment of minority students in special education in 1979. While the number of both Blacks and Hispanics in special education programs overall was disproportionately low, both groups were considerably over-represented in certain kinds of special education classes. Black students were much more likely than White or Hispanic students to be placed in 502.3 classrooms, spending 25 to 60% of their time out of the regular education mainstream. Hispanic students were more likely than Whites or Blacks to be placed in 502.4 and .4(i) substantially separate classrooms, spending 60% or more of their time segregated from the rest of their schoolmates.

In its response, Chelsea identified the following as reasons for this pattern of placements:

— a shortage of qualified bilingual special educators

— the existence of a good bilingual program

— the resistance of private special education programs to accepting Spanish-dominant students

Chelsea proposed to take the following actions to remedy this pattern:

1. To increase the bilingual special education staff from 6 to 13 personnel
2. To provide between 10 and 20 in-service workshops for English and Spanish personnel, parents and other community members which would include information on bilingual special needs identification and assessment.
3. To report to the Department of Education each instance of a student's being refused placement at a 766-approved private school because of his/her language dominance.

The Department approved Chelsea's plan with the addition of the following requirements:

— that they emphasize in-service training for the Transitional Bilingual Education (TBE) staff in the Chapter 766 referral process.

— that they provide the Parent Advisory Council and community members the opportunity to participate in other in-service trainings beyond the one session specifically planned for them.

— that all Black students currently enrolled in 502.3 programs receive a review of their IEP's (Individual Educational Plans) by November 1, 1979.

Holyoke

Holyoke's 1978 statistics showed a total school enrollment of 7,992 students: 5,919 Whites, 1,742 Hispanics and 331 Blacks. The total special education enrollment was 746. The Department of Education charged that there was a substantial over-representation of Black students in special education overall, and in the 502.4/.4(i) prototypes. Hispanic students were under-represented in special education overall, and over-represented in the 502.3 and 502.4/.4(i) prototypes.

After a three-day-long public hearing which included testimony from the Holyoke school department, repre-

sentatives of the Holyoke Hispanic community, the Department of Education and various other expert witnesses, Holyoke was found guilty of denying equal educational opportunities to Hispanic and Black students. Holyoke was unable to satisfactorily disprove the existence of significant disproportions in their special education statistics, or to justify such disproportions.

After nearly three months of negotiations, representatives of the Holyoke school system, the Department of Education and the Interveners came to an agreement on a Remedial Plan which contained the following eight major goals:

1. To provide appropriate identification and referral of minority students:
   - hold mandatory in-service training for all staff systemwide on pre-referral and bilingual/bicultural issues.
   - develop a system to insure that local schools maintain accurate/current pre-referral records.
   - develop a system to insure that all students referred have had pre-referral modifications.
   - to increase Black and Spanish-speaking staff (hire or reassign a Spanish-speaking program coordinator, Spanish-speaking special education teachers, a bilingual programer, three Spanish-speaking school adjustment counselors)
2. To implement the voluntary LAU Plan (bilingual education).
3. To provide appropriate testing/assessment for minority special needs students:
   - use non-discriminatory assessment techniques
   - observe evaluation time lines (hire staff and consultants)
   - provide bilingual psychological assessment services
4. To provide appropriate special programs for minority students:
   - review and if necessary re-evaluate Black and Hispanic students in 502.3 and 502.4 and .4(i) placements.
5. To increase regular and special education program options:
   - insure that "criteria for movement to a less restricitve prototype" section is filled out on all IEP's.
   - review and tabulate these IEP entries and use the information to develop needed program alternatives.
6. To provide appropriate staffing to meet the needs of minority students in special education programs:
   - hire staff (already mentioned) for 1979-80 and assess staffing needs for 1980-81 "every effort should be made to hire Black special educators and psychologists."
7. To provide community interaction with the special education program:
   - Rewrite and translate all forms and explanatory guides for parents
   - Develop "parent peer conduit" program as part of outreach effort to inform and secure the cooperation of minority parents.
   - by November 30, 1979 establish a Parent Special Needs Group to meet regularly with the school system's Ad Hoc Special Education Committee.
8. To monitor the implementation and evaluate the effectiveness of the special education program for minorities:
   - maintain data
   - disseminate data to appropriate staff
   - appoint a field supervisor responsible for monitoring 766 minority placements

Lowell

Lowell, with an enrollment of 11,779 White, 1,192 Hispanic and 330 Black students, placed a total of 1,473 students in special education programs, according to October, 1978 data. The Department of Education cited Lowell for failure to provide equal educational opportunities to minority students because a disproportionetly high number of Black and Hispanic students were placed in special education programs. In addition, a disproportionately high number of minority special needs students were placed in the more restrictive types of special education classrooms (502.3 and 502.4). At the same time, very few minority students, in proportion to their numbers in the special needs group, were receiving the more expensive special private day and residential school placements (502.5 and 502.6).

Lowell's Remedial Plan consists of the following provisions:

1. During September and October, 1979 all Black and Hispanic students in 502.3 and .4 will have their IEP's (Individual Education Plans) reviewed by the Special Education Administrator, the Special Education Supervisor and the Evaluation TEAM Chairperson. If this review indicates that changes in the child's program may be needed, the Evaluation TEAM, including the parent, will be reconvened to make the necessary changes.
2. A written communication will be sent to all school principals, all special education personnel and all bilingual education personnel directing them to be "especially cognizant of and sensitive to . . ." the needs of Black and Hispanic students who may need special education.
3. In-service training for all special and bilingual education personnel will be conducted in October, 1979 and January, 1980. Two additional sessions will be conducted in October and December 1979 for all school psychologists.
4. The Placement Committee (comprised of the Evaluation TEAM Chairperson, the School Principal, the Supervisor of Special Education, and the Administrator of Special Education) will continue to review all IEP's calling for a 502.4 or higher placement.
5. Beginning in September, 1979 each IEP will be reviewed by one of the three Supervisors of Special

Education. A Supervisor will be directly involved with each new referral for special education.

6. Beginning in September, 1979 the Coordinator of the Bilingual Education Program and the Administrator of Special Education will meet regularly to coordinate bilingual/special education programs and services.

Lynn

The problem in Lynn was identified by the Department of Education as an under-representation overall of Black and Hispanic students in special education combined with an over-representation of Blacks and Hispanics in prototypes 502.3 and 502.4. According to its 1978 figures, Lynn had 12,956 White, 502 Hispanic and 946 Black students in its total enrollment. Lynn had placed 2,779 White, 54 Hispanic and 84 Black students in special education programs. The Remedial Plan for Lynn included the following elements:

1. A re-evaluation of the pre-referral, referral and evaluation process and assessment tools for cultural and linguistic bias.
2. Hiring a bilingual generic teacher, two bilingual aides, a Black bilingual resource teacher and a bilingual psychologist.
3. Establishment of a bi-cultural team to review referrals and placements of all minority students.
4. Development of more regular education program alternatives and greater use of pre-referral program modifications.
5. Related in-service workshops and parent outreach activities.

Springfield

Springfield was cited as having an under-representation of Black and Hispanic students in mainstreamed special education programs and an over-representation of both minorities in the more restrictive (502.3 and 502.4) prototypes. According to 1978 reports, Springfield had 7,627 Black, 4,480 Hispanic and 14,590 White students, of which respectively 696 Black, 354 Hispanic and 1,261 Whites were enrolled in special education programs. Springfield's Remedial Plan asserted that the lack of enough "mainstream" special education alternatives contributed to the disproportionate placement of minorities in restrictive special education programs. It did not explain why this system-wide lack of services should result in minority students being placed out of the mainstream at a much higher rate than White students. Nonetheless, the remedies proposed largely address this service lack rather than the referral and placement process:

1. The development of Learning Centers (resource rooms) in each school building, including some bilingual learning centers and secondary school level learning centers.
2. A bilingual assessment project to review all current bilingual assessment instruments and develop improved instruments. In conjunction with this, a one-time screening of all TBE (Transitional Bilingual Education) students, distribution to all TBE teachers of revised criteria for special education referral.
3. Hiring of one bilingual psychologist and three special education aides.
4. A Professional Opportunity Program whereby five to six current bilingual staff are given incentive to aquire special education certification.
5. Related in-service workshops.

Woburn

In 1978, the Woburn School System reported having 7,083 White, 159 Hispanic and 57 Black students. Of the total enrollment, 846 were in some type of special education program. The Department of Education found Woburn to have placed a disproportionately high number of Black and Hispanic students in special education programs. More specifically, the Department found that minority students, especially Hispanic students, were much more likely than White students to be placed in substantially separate 502.4 special education classes. To remedy this trend, Woburn proposed the following actions:

1. Continuing to require that all Education Plans be signed by the building principal prior to being signed by the Special Education Administrator.
2. Continuing to require that all Education Plans calling for placement in a 502.3 or higher prototype be reviewed by the Special Education Administrator.
3. Continuing to provide on-going training to all regular and special education staff on how to use the new, state-mandated Education Plan forms.
4. Continuing to provide in-service training to all staff within the system and including in this in-service program "any specific areas relating to Hispanic and Black students . . . whatever they might be."
5. Continuing to use the bilingual counselor as translator.
6. Translating all forms relevant to the 766 process into Spanish.
7. Placing a log of access in each active special needs case folder and reviewing all folders to assure that their content and organization are up to date.
8. Notifying all staff in writing that all placements in a 502.3 or higher prototype require a full evaluation.

Worcester

Worcester, a school system of approximately 24,956 students according to the 1978 data (21,556 White, 1,183 Black, and 1,917 Hispanic) was found by the state Department of Education to have a substantial over-representation of Black and Hispanic students in prototypes 502.4/502.4(i), and an under-representation of both groups in 502.2 programs. Worcester identified six "problems" to which it addressed its Remedial Plan:

— That the special education pre-referral process was not being properly or consistently utilized.

— That there was a lack of regular education program alternatives.

— That there was a lack of community outreach and information to minority parents.

— That Worcester's method for keeping track of the numbers of minority and other students referred and placed in special education programs was inadequate.

— That Black students were over-represented in 502.4 and .4(i) programs and under-represented in 502.2 programs.

The Remedial Plan began by identifying 12 "target" schools where most of the 1979–80 efforts would be focused, and went on to outline the following actions to address the above problems:

The pre-referral process:

1. Implement a "314 Building Conference Plan" for pre-referral modifications in "target" schools, 1979-80. The process would become system-wide in 1980-81.
2. Conduct an in-service training needs assessment, develop an in-service program by January 30, 1980, hold three system-wide mandatory in-service training sessions during 1979-80, and offer a range of additional courses to staff of the "target" schools.

Program alternatives:

1. Implement a Basic Program at the Burncout Junior High during 1979-80 which would include remedial English, Math and Career Skills Components. This program expansion would require hiring a bilingual counselor, a basic skills teacher and a reading consultant by November, 1979.
2. Develop a Generic Specialist Program for 1979-80 by hiring two generic specialists in addition to the one currently employed to assist regular and special needs staff in modifying curriculum and developing program alternatives. Two more generic specialists would be hired for 1980-81 for a total of five.

Community outreach:

1. Establish a *Special Education Advisory Council* of key special education staff to advise the Special Education Administrator and to promote ongoing communications with minority group parents. (1979-80)
2. Establish a *Parent Outreach Committee* of representatives from each of the school Parent Advisory Groups. They would help design a parent brochure and a "Bicultural Awareness Program"
3. Have Project Involve design and run a 9-session parent training course on special education for minority group parents.

Method of keeping track of the numbers:

1. Design and implement in 1979-80 an improved data collection and monitoring system.

Black students, over/under-representation:

1. All of the above actions are expected to impact this problem
2. Give special consideration to the possibility of movement to a less restrictive prototype, at the regularly scheduled Annual Reviews of minority special needs students.

Hispanic students, over/under-representation:

1. All of the above actions are expected to impact this problem
2. The Bilingual Department will implement the *LAU guidelines* (for language dominance and proficiency categorization) and will hire five additional bilingual teachers.

Other Publications of the Massachusetts Advocacy Center:

The Way We Go To School: The Exclusion of Children in Boston (1970)

Suffer the Children: The Politics of Mental Health in Massachusetts (1972)

State of Danger: Childhood Lead Paint Poisoning in Massachusetts (1974)

Hunger in the Classroom: The Massachusetts School Breakfast Program (1974)

Making School Work: An Education Handbook for Students, Parents and Professionals (Revised Edition, 1975)

Special Education in Boston: The Mandate and the Reality (1975)

Status Report: Special Education Chapter 766 (1975)

Status Report: Freedom of Information in Massachusetts (1976)

Equal Opportunity Denied: Vocational Education in Massachusetts (1976)

Frozen Means You Don't Move: The Impact of Budget Cuts on People in Massachusetts Institutions (1978)

Double Jeopardy: The Plight of Minority Students in Special Education (1978)

Delinquent Justice: Juvenile Detention Practice in Massachusetts (1980)

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Massachusetts Advocacy Center

The Massachusetts Advocacy Center, established in 1973 as an outgrowth of the Task Force on Children Out of School, Inc., represents children's interests before state and local bodies which legislate, regulate and deliver human services to children. The Center acts to strengthen progressive legislative mandates and to close the gap between those requirements and actual service delivery in the fields of education, juvenile justice and child health.

The Center uses a multi-strategic approach to problem solving. Administrative negotiation, regulation writing, case advocacy, public education, litigation are all employed when necessary. Moreover, participation on public task forces gives the Center input into executive branch rule making and policy proceedings.

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MASSACHUSETTS ADVOCACY CENTER
2 Park Square
Boston, Massachusetts 02116

Council for Exceptional
Children
1920 Association Drive
Reston, VA 22091